

# EXHIBIT 23

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August 16, 2023

**CONTAINS MODERNA DESIGNATED HIGHLY CONFIDENTIAL – OUTSIDE  
COUNSEL EYES ONLY MATERIAL**

**Via Email**

Mark McLennan  
KIRKLAND & ELLIS LLP  
200 Clarendon Street  
Boston, MA 02116  
mark.mckennan@kirkland.com

Re: *Arbutus Biopharma Corporation and Genevant Sciences GmbH v. Moderna, Inc.  
and ModernaTX, Inc.*, Case 1:22-cv-00252-MSG (D. Del.)

Dear Mark:

I write in response to your July 21, 2023 email regarding Moderna's longstanding refusal to provide information regarding the availability of samples from each batch of the Accused Product. I note that Moderna's four-month delay in providing what it conceded in your July 12, 2023 to be a "simple listing" of batches of the Accused Product has prejudiced, and continues to prejudice, Plaintiffs. Moderna's complaints regarding burden remain unsubstantiated and moreover do not justify Moderna's delay—to the contrary, "Courts recognize the essential nature of accused product samples in patent infringement cases." *Everlight Elecs. Co., v. Nichia Corp.*, 2013 WL 6713789, at\*2 (E.D. Mich. Dec. 20, 2013) (ordering identification and production of samples for "more than 1,000 Accused LED Products"). To the extent that Moderna identifies other batches of the Accused Product ("Accused Batches"), please inform us immediately.

Is Moderna willing to stipulate that any of the Accused Batches infringe the claims of the Asserted Patents? If not, then Moderna has no basis for disputing the relevance of samples with respect to each and every one of the Accused Batches. While Moderna has insisted that it would be burdensome to produce 50 vials from each of the Accused Batches, it has repeatedly refused even to state the extent to which samples are available. [REDACTED]

WILLIAMS & CONNOLLY<sup>LLP</sup>

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In the alternative, Plaintiffs are willing select a subset of one hundred Accused Batches for which Moderna will produce the requested samples, provided that Moderna stipulates that a finding of infringement as to one or more of the Accused Batches will constitute a finding that all of the Accused Batches infringe. Only such a stipulation will ensure that Plaintiffs are not prejudiced by Moderna not producing the requested samples from all Accused Batches. If Moderna will so stipulate, then Plaintiffs will identify the hundred Accused Batches within five business days of the stipulation's entry, subject to Moderna's agreement that it will produce the requested samples within two weeks of such identification.

The continued delay in the production of samples prejudices Plaintiffs, and we reiterate our request that Moderna promptly identify the availability of samples from each of the Accused Batches and produce the requested materials. If Moderna is not willing to do so, please let us know if you are available to meet and confer this week, so that we may raise this issue with the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Sheh", with a stylized, cursive script.

Anthony Sheh

cc: Counsel of Record